

## REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

## SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

**§ 1321. Eligibility requirements for transfer of funds; reimbursement by State; application; certification; limitation**

(a)(1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, with interest to the extent provided in section 1322(b) of this title, in the manner provided in sections 1101(d)(1), 1103(b)(2), and 1322 of this title. An advance to a State for the payment of compensation in any 3-month period may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the month preceding the first month of such 3-month period, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in each month of such 3-month period.

(2) In the case of any application for an advance under this section to any State for any 3-month period, the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in each month of such 3-month period, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any 3-month period shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to each month of such 3-month period.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this subchapter,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term "compensation" means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the Government Accountability Office, transfer in monthly install-

ments from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) of this section by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 1103(b)(1) of this title). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.

(Aug. 14, 1935, ch. 531, title XII, §1201, as added Oct. 3, 1944, ch. 480, title IV, §402, 58 Stat. 790; amended Aug. 6, 1947, ch. 510, §5(b), 61 Stat. 794; 1949 Reorg. Plan No. 2, §1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, §404(a), 64 Stat. 560; Aug. 5, 1954, ch. 657, §3, 68 Stat. 671; Pub. L. 86-778, title V, §522(a), Sept. 13, 1960, 74 Stat. 978; Pub. L. 94-566, title II, §213(a)-(c), Oct. 20, 1976, 90 Stat. 2677; Pub. L. 97-35, title XXIV, §2407(b)(1), Aug. 13, 1981, 95 Stat. 880; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

## AMENDMENTS

2004—Subsec. (b). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

1981—Subsec. (a)(1). Pub. L. 97-35 substituted "with interest to the extent provided in section 1322(b) of this title" for "without interest".

1976—Subsec. (a)(1). Pub. L. 94-566, §213(a), substituted "any 3-month period" for "any month" in provisions preceding subpar. (A), "the month preceding the first month of such 3-month period" for "the preceding month" in subpar. (A), and "each month of such 3-month period" for "such month" in subpar. (B).

Subsec. (a)(2). Pub. L. 94-566, §213(b), substituted "any 3-month period" for "any month" in provisions preceding subpar. (A) and following subpar. (B), and "each month of such 3-month period" for "such month" in subpar. (A) and provisions following subpar. (B).

Subsec. (b). Pub. L. 94-566, §213(c), provided that the transfer of amounts by the Secretary of the Treasury from the Federal unemployment account to the account of the States in the Unemployment Trust Fund be made in monthly installments and that the amount of any monthly installment so transferred not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which the installment is made.

1960—Subsec. (a). Pub. L. 86-778 amended subsec. (a) generally, substituting provisions relating to advances on a monthly basis upon application of the Governor and the furnishing of an estimate of amount of requisite advance and determination and certification by the Secretary of Labor of the requisite amount limited to a sum which is available in the Federal unemployment account for advances for the month for former provisions relating to advances on a quarterly basis upon application of the Governor for a specified amount not to exceed the highest total compensation paid out under the unemployment compensation law of the State during any one of the four calendar quarters preceding the quarter in which the application is made, where the balance in the unemployment fund of the State in the Unemployment Trust Fund at the close of Sept. 30, 1953, or the last day in any ensuing calendar quarter is less than the total compensation paid out under the unemployment compensation law of the State during the twelve-month period at the close of such day; incorporating former provisions of subsec. (b), relating to repayment of advances, in par. (1), in-

serting provision for repayment under section 1103(b)(2) of this title, and provisions formerly designated as cl. (A) and (B) in par. (3)(A) and (C); and adding par. (3)(B).

Subsec. (b). Pub. L. 86-778 amended subsec. (b) generally, striking out provision for repayment of advances which is now incorporated in subsec. (a)(1) in the reference to repayment under sections 1101(d)(1) and 1322 of this title.

1954—Act Aug. 5, 1954, amended section generally to provide that: (1) the first condition of eligibility for an advance is that the balance in the State unemployment fund at the close of a calendar quarter be less than the total of cash payments made by the State to individuals during the 12-month period which ends with such quarter; (2) the Governor of the State must apply for an advance during the quarter following the quarter specified in paragraph (1) of this section; and (3) the total amount certified for any one application may not exceed the amount paid out by the State for cash benefits in that particular quarter.

1950—Subsec. (a). Act Aug. 28, 1950, substituted "January 1, 1952" for "January 1, 1950".

1947—Subsec. (a). Act Aug. 6, 1947, substituted "June 30, 1947" for "June 30, 1945" and "January 1, 1950" for "July 1, 1947".

#### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-566, title II, §213(d), Oct. 20, 1976, 90 Stat. 2678, provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976]."

#### EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Aug. 28, 1950, effective Jan. 1, 1950, see section 404(c) of act Aug. 28, 1950, set out as a note under section 1104 of this title.

#### TERMINATION DATE

Act Aug. 6, 1947, ch. 510, §4, 61 Stat. 794, provided that: "Section 603 of the War Mobilization and Conversion Act of 1944 [section 1651 note of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to Title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [this section and section 1104 of this title]."

#### APPLICATIONS FOR TRANSFER OF FUNDS UNDER FORMER PROVISIONS OF SECTION 1321(a); LIMITATIONS

Pub. L. 86-778, title V, §522(b), Sept. 13, 1960, 74 Stat. 979, provided that:

"(1) No amount shall be transferred on or after the date of the enactment of this Act [Sept. 13, 1960] from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act [subsec. (a) of this section] as in effect before such date; except that, if—

"(A) some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

"(B) the Governor of such State, after the date of the enactment of this Act [Sept. 13, 1960], requests the Secretary of the Treasury to transfer all or any part of the remainder to such account,

the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office [now Government Accountability Office], transfer from the Federal unemployment account to the account of such State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act [Sept. 13, 1960].

"(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act [section 3302(c) of Title 26, Inter-

nal Revenue Code] and titles IX and XII of the Social Security Act [subchapter IX and XII of this chapter], if any amount is transferred pursuant to paragraph (1) to the unemployment account of any State, such amount shall be treated as an advance made before the date of the enactment of this Act [Sept. 13, 1960]."

#### ADVANCES TO ALASKA

Act June 1, 1955, ch. 118, 69 Stat. 81, authorized the Governor of Alaska to obtain from the Federal Unemployment Fund such advances as the Territory of Alaska might qualify for and as might be necessary to obtain for the payment of unemployment compensation benefits to claimants entitled thereto under the Alaska employment security law and provided for the reimbursement of the general fund of the Territory of Alaska from which advances have been made for the payment of unemployment compensation benefits from advances made through the Governor of Alaska from the Federal Unemployment Fund.

### § 1322. Repayment by State; certification; transfer; interest on loan; credit of interest on loan

#### (a) Repayment by State; certification; transfer

The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1321 of this title, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

#### (b) Interest on loan

(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made,

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed, and

(C) such State meets funding goals, established under regulations issued by the Secretary of Labor, relating to the accounts of the States in the Unemployment Trust Fund.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the "first advance") by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.